App. F. IX-4

*Previous References*

1937-38
(CB)

File No. 40/37

Serial No. 4

*Letter References.*

# GENERAL AND REVENUE SECRETARIAT.

*Serial No.* 4

**Part B for** Cent. 1937

**SUBJECT.**

Letter from His Highness the Maharaj Rana Bahadur of Dholpur to the Political Agent, Eastern Rajputana States, Bharatpur on the Instrument of Accession.

WD 0418—GPB—22,500—29-8-36

WITH THE COMPLIMENTS

OF

HIS HIGHNESS THE MAHARAJ RANA BAHADUR

OF

DHOLPUR.

Submitted CS. 40-37-4

The appended print & copy of His Highness of Dholpur's letter to the Political Agent, Eastern Rajputana States, Bharatpur on the subject of the Instrument of Accession may be sent to the Chief Sec for record

18/10

Chief Sec 18/X

FIRST ... OCT 18 1937 No 2205

DEWAN'S OFFICE 18 OCT. 1937 No. S-S-S

For perusal

18/10

SECOND ... 2 OCT. 37 No 3092

1st member & 2nd member

23/10/37 23/10

CONFIDENTIAL.

**Copy of a letter dated the 1st October 1937, from His Highness the Maharaj Rana Bahadur of Dholpur, to the Political Agent Eastern Rajputana States, Bharatpur.**

In reference to our reply about the question of Federation, we have been waiting for the legal advisor's opinion up to now, and have received it now on various important and far reaching points. We have, however, received just a letter preceding the final opinion from England, in which our lawyer has pointed out very important points to be made clear before the whole picture is looked at for the present and for the future.

From a sub-section appears the possibility of a Ruler deciding to postpone his accession to the Federation until after its establishment. In such case his request for admission is to be transmitted to His Majesty through the Governor General if such request is made within " twenty years " of the establishment of the Federation. It is, therefore, clear that His Majesty in deciding whether to accept or not, requests made before its expiration will be guided by the advice of the Governor General and the Secretary of State and not by the Federal Ministers or the Federal Legislature. It will, therefore, be for the Governor General and the Secretary of State within the first twenty years, to decide on what policy they will adopt in the acceptance or refusal of requests made for admission after the establishment of Federation.

This question naturally becomes important, and I would want an illuminating guidance in regard to the opinion of the Government and whether a Ruler will be prejudiced in the matter of acceptance of the terms of his Instrument of Accession, and its Schedules, submitted after the establishment of Federation as compared with the terms which the Government are prepared to accept at the present moment.

Further need from the practical side of clearing this point is important when we look to the two fundamentals for the States, namely, 1st Constitutional developments and 2nd Financial developments.

The States have asked for safeguards in their Instrument of Accession. By the recent elections, 7 Provinces have returned the Congress Delegates, who have persistently given out that they will work for the relaxation of such safegnards. Although such safeguards will be under the special responsibilities of the Governors, it cannot be denied that they will be exposed to relaxation amounting to practical extinction, by mere Ministerial pressure exercised upon the Governor, which

would mean that the Governor's powers would be more or less arbitrary even for the sake of protecting rightful interests. When discussing this matter with the constitutional lawyers, it was pointed out in February last that the Governor will not be amenable to any control by the courts if, under pressure from Ministers or, it may be, under particular instructions from the Secretary of State through the medium of the Governor General, he decides to be guided solely by the advice of Ministers in the exercise of those responsibilities. The Congress, as I have stated above, will work with pressure for the relaxation of safeguards. In that case the Governors of the Provinces may either give way or dissolve the Legislature with the possibility of the demands of the Ministers becoming still more insistent if the results of the elections are in their favour, or the Governors may avail themselves of their " emergency " powers under section 93. Whatever be the result, it is clear that for some time to come the political situation, and, with it the constitutional developments in the Provinces will be one of perilous uncertainty. I say perilous, because any organisation and strong developments that imperil the Governor's complete independence in the discharge of his special responsibilities, would naturally imperil the rights and interests of the States. In support of such supposition, I would refer to section 52 ( f ) of the Act, including among the Governer's " special responsibilites " and " protection of the rights of any Indian State and the rights and dignity of the Ruler thereof ", and article 13 of the Instrument of Instructions including among such responsibilities the prevention of any executive action by his Ministers, as well as the arrest of any legislation, which would imperil the economic life of any State or prejudicially affect any rights of any State of their age long sovereignty depending on Treaty or otherewise.

In the sphere of the Governor General and the Federal Government, the special responsibilities affecting the rights of the States are of even greater importance because of their greater ambit. Organised political development in the Provinces resulting in constitutional developments and taking the form of a relaxation of the Governor's insistence on such responsibilities, is to my mind bound, to re-act on the position at the centre. The Congress party are quite convinced that they will attain this result and have given out that they are going to work politically for it. In that case the special protection afforded to the States and their Rulers by section 12-G and by article 15 of the Instrument of Instructions to the Governor General will also be imperilled. No such condition as an amendment of the Act by Parliament would be necessary to bring about such a result. Even in matters of discretion as well as individual judgment, which will invariablly be guided by big pressures brought by Ministers, there are no legal

limits to the extent to which the Governor General may consult his Ministers. The report of the joint Parliamentary Committee at page 43 para 76 is quite explicit on this point. Such consultations may result in the Governor General's acquiescence in the views of his Ministers if the result of this persistence in dissent is likely to be a serious political crisis.

Another point to which this State and I am sure, many others, attach great importance and which we are advised has not been secured by the Act is the right of maintenance of the extra-territorial or extra-statal rights and privileges at present enjoyed by the States in British India. Any legislation whether Federal or Provincial prejudicial to them is entirely dependent on the action "in his discretion" of the Governor General or the Governors in giving his or their assent to such Bills. Although discretion in such questions will depend on the Governor General and the Governors, yet in proportion as such discretion is shared by them with Ministers, the protection on which the States have to rely is likely to dis-appear.

I am aware that, in the last resort the Governors and the Governor General are subject to the control of the Secretary of State in the discharge of their special responsibilities. In order to avoid mis-conception, I would like to say here that I entertain no apprehensions that the present Secretary of State and equally His Excellency the Viceroy will not do everything in their own personal positions to protect the interests of the States. But the Secretary of State, and through him the Viceroy, is ultimately responsible to Parliament. Is it outside the pale of possibility that a new Parliament of a new political complexion will involve the appointment of a new Secretary of State ? If as a result of the next general election in England,the opposition is returned to office, the consequence may be and probably will be the dis-appearance of the special responsibilities, of the Governors and the Gevrernor General, because the opposition have also made clear that if they got into power they will work for the introduction of the Dominion Status in India with all the unrestricted freedom of Ministerial action, which that conception involves. At present we all know that no such election can take place within next three years.

The financial developments, which appear likely to be consequent upon Federation also fill me with anxiety. The items in the Federal Legislative list on which the States have been invited to accede are Salt duties, Excise and Export duties. Section 140 of the Act provides that "if an Act of the Federal Legislature so provides" there shall be paid out of the revenues of the Federation to the Federated States which have accepted these items "sums equivalent to the whole or any part" of the net proceeds of these duties. The prospect of receiving some such financial relief for the States' own expenses and daily increas

ing expenses in their administration, seems remote when we look at the Federal expenses in the new constitution. It seems fairly certain, therefore, that any allocation of any part of the proceeds by the voluntary action of the Federal Legislature must depend entirely on whether it has any surplus of general income over general expenditure available for distribution. But again in the event of any such surplus it is provided by the Act itself that there shall be a kind of first charge on such a surplus which shall be assigned to the Provinces and to the Federated States, if any, within which income tax is leviable, in the form of a percentage of the net proceeds of taxes or income to be prescribed by Order-in-Council. This, I am advised is the effect of the provisions of section 138 (1) and (2) coupled with the provisions of the 2nd sub-section as to the maintenance of the financial stability of the Federal Government. In the report of the Indian Financial Enquiry Committee conducted by Sir Otto Niemyer, it is stated that the power of the Central Government thus to surrender a share of the revenues collected and levied by it will, in fact, depend largely on the extent to which its main expansive head viz, income tax progresses and on the extent to which the Railways move towards attaining a surplus. But since the publication, a year ago, of the Niemyer report, the Indian Railways Enquiry Committee has now on June 27th of this year entirely negatived Sir Otto Niemyer's anticipation of a contribution to Federal revenues from the Railways. It would, therefore, appear that under these circumstances there is little or no prospect of any part of the net proceeds of Federal taxes in the matter of Excise, Salt and Export duties being available for assignment to the Federated States. Under such circumstances and with the growing needs of more and more expensive administration of individual States, it would make their day to day expenses for their own Governments almost prohibitive—a position which I hope the Government would appreciate and realise that except for a very few large States which have big yearly surplus in revenue, a large number of the other States will be faced with financial catastrophe. If the financial position of the States is going to be otherwise in any way, I would, like further views of the Government for our anxious information.

Now that we have received the Draft for the Instrument of Accession, we are going through it and will in due course forward it on to you. The advice sent to us seems almost the same as sent to several other States and our document will probably be much the same as that of others.